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The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BRANDON SHAW and EMILY SHAW,
individually and as husband and wife, including
their marital community comprised thereto, and
on behalf of T.S., a minor,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 2:23-cv-00849-KKE

**ORDER GRANTING STIPULATED
MOTION TO COMPEL FRCP 35
NEUROPSYCHOLOGICAL EXAMS**

Before the Court is the parties' stipulated motion to compel Rule 35 examinations. ECF No. 25. The Court has reviewed the motion, the corrected motion (Dkt. No. 26-1), and all other relevant filings.

As the parties agree that Plaintiffs' mental or physical conditions are in controversy in this action, and because the parties agree that there is good cause to compel independent neuropsychological exams under Federal Rule of Civil Procedure 35, the Court GRANTS the parties' stipulated motion to compel (Dkt. No. 25) according to the terms agreed upon by the parties:

1. The neuropsychological examination of Plaintiff T.S. shall take place in Spokane Valley, Washington, on August 6-8, 2024, at the offices of Dr. Michelle White, Ph.D.;
2. The neuropsychological examination of Plaintiff Emily Shaw shall take place in Spokane Valley, Washington, on August 27-29, 2024, at the offices of Dr. Michelle White, Ph.D.;

- 1 3. The examiner shall be Dr. Michelle White, Ph.D. ("The Examiner);
- 2 4. The exams shall consist of both interviewing and testing. The Examiner shall provide for
3 and allow all reasonable breaks during testing (i.e., bathroom, water and/or one or more
3 15-minute breaks in the morning and afternoon), and a 45-minute lunch break;
- 4 5. The Examiner shall make a written report in accordance with Rule 35(b) and other applicable
4 discovery rules;
- 5 6. Dr. Michelle White will disclose, as soon as reasonably practical, the neuropsychological
6 examination testing data directly to any of Plaintiffs' selected neuropsychological experts.
- 7 7. Plaintiff shall have the right to take the deposition of the Examiner for the purpose of
7 discovery, unless the Defendant decides not to call the Examiner as a witness at trial. Such a
8 determination shall be made 30 days after the report has been disclosed to counsel;
- 9 8. The Examiner shall not do any physically invasive tests;
- 10 9. No laboratory (i.e. blood or urine draw) tests may be given;
- 11 10. No person, other than the Examiner and the Plaintiff, shall participate in any way in the
11 examination (except for psychometricians and/or similar technical staff or agents of the
12 Examiner);
- 13 11. Dr. White shall administer well normed, written psychological tests or exams;
- 14 12. A list of all records reviewed by the Examiner shall be reflected in the Examiner's report;
- 15 13. The Plaintiff does not have the right to have a representative present at either the testing or
15 interview portion of the examination, nor will there be any recording, whether audio or video,
16 of the examination, pre-screening of examination materials, or limitation of the Examiner's
16 ability to review Plaintiffs' history;
- 17 14. The Examiner shall not ask about negligence or liability related to this case;
- 18 15. Defendant will pay the cost of lodging in Spokane/Spokane Valley, Washington during the
18 timeframe for the IME exams, as well as the cost of reasonable reimbursement for mileage
19 from Moses Lake, Washington.

20 Dated this 30th day of July, 2024.

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23 Kymberly K. Evanson
23 United States District Judge